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In re Application of
HAYES

Application No.: 10/5321,907

PCT No.: PCT/US03/36836

Int. Filing Date: 17 November 2003

Priority Date: 15 November 2002

Attorney Docket No.: 33072/101/101/

For: SYSTEM AND METHOD OF VISIBLE
SURFACE DETERMINATION IN COMPUTER
GRAPHICS USING INTERVAL ANALYSIS

DECISION ON PETITION

UNDER 37 CFR 1.1.497(d)

This decision is in response to applicant's "Response to Notification of Missing Requirements Under 35 U.S.C. §371 in The United States Designated/Elected Office" filed 31 October 2005 in the United States Patent and Trademark Office (USPTO). The response is being treated as a request under 37 CFR 1.497(d) to delete inventor David R. Schmidt from the present National stage application. As authorized, the \$130.00 petition fee will be charged to deposit account number 14-0620.

BACKGROUND

On 17 November 2003, applicant filed international application PCT/US03/36836, which claimed priority of an earlier U.S. application filed 15 November 2002. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 15 May 2005.

On 27 April 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); the combined declaration and power of attorney discussed herein and a preliminary amendment.

On 27 September 2005 applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 31 October 2005, applicant filed the present response which is being considered as a petition under 37 CFR 1.497(d).

DISCUSSION

37 CFR 1.497(d) [formally, 37 CFR 1.48] states in part: "If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application....applicant must submit:

- (1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;
- (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63;
- (3) the fee set forth in 37 CFR 1.17(I); and
- (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

Applicant has satisfied items (2) and (3) and item (4) does not apply in the present application.

Regarding item (1), applicant has not submitted a statement from David R. Schmidt avowing that the error in inventorship occurred without any deceptive intention on the inventor's part. In his signed statement, Mr. Schmidt merely acknowledges being incorrectly named as an inventor and his believe that Nathan T. Hayes is the sole inventor of the invention identified in the this application. This statement is insufficient for the purposes of 37 CFR 1.497(d).

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons above, applicant's request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

Applicant is hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file any request for reconsideration. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

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Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read "Derek A. Putonen".

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